



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1996

Mr. Randy Dale
Regional Attorney
Texas Department of Protective
and Regulatory Services
P.O. Box 6635
Abilene, Texas 79608-6635

OR96-1094

Dear Mr. Dale:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37343.

The Texas Department of Protective and Regulatory Services (the "department") received an open records request for any records concerning the investigation of a certain individual for alleged child abuse. The requestor is the accused, who is a parent of the victim of the alleged abuse. You contend that the department may withhold the requested records from the public pursuant to sections 552.101, and 552.108 of the Government Code.

You assert that section 552.108 apply to the requested information because you say it relates to a pending criminal prosecution. You enclosed a letter from Mr. Gerald W. Taylor, Assistant Criminal District Attorney for Wichita County, Texas, in which Mr. Taylor requests that the department withhold the requested information because the case "is under current or pending criminal prosecution." The letter also states that the release of the requested records would hinder the prosecution of the case.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law. Section 261.307 of the Family Code, states in part as follows:

As soon as possible after initiating an investigation of a parent or other person having legal custody of a child, the department shall provide to the person a brief and easily understood summary of:

(3) the person's right to review all records of the investigation unless the review would jeopardize an ongoing criminal investigation;

We need not address whether section 261.307 gives the requestor a right to review investigative records, since we believe that the district attorney has established that such review would jeopardize the pending criminal investigation.

Section 261.201(a) of the Family Code reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The requested information consists of "reports, records, communications, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. We believe subsection (a) is applicable to the requested information.

Subsection (f) of section 261.201 of the Family Code reads as follows:

Notwithstanding Subsection (b),¹ the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

¹Subsection (b), which is not applicable here, describes the conditions when a court may order the disclosure of information made confidential by subsection (a)

Family Code § 261.201(f)(footnote added). Subsection (f) requires the department to provide certain parties, including a parent of a child who is the subject of a child abuse investigation, the information made confidential by subsection (a), with certain redactions. As the requestor here is the parent of the child involved in the investigation, we must consider whether the department must release the requested information to the requestor pursuant to subsection (f). However, the department's release of the information pursuant to subsection (f) is "subject to department rule." We will consider whether the department's rules provide for the disclosure of the requested information to the requestor.

Section 700.102 of title 40 of the Texas Administrative Code states that:

Information about a child protective services client is confidential and may not be released except as authorized by statute, federal regulation, court direction, attorney general's opinion, and the [department's] rules concerning disclosure of information and confidentiality of information in Chapter 734 of this title (relating to Public Information).

Section 700.102 directs us to consider other department rules concerning the disclosure of client information. Section 700.103 of title 40 of the Texas Administrative Code provides as follows:

A child protective services client may review all information in the client's case record except the identity of the complainant, *information exempted from disclosure under the Open Records Act*, and information exempted under other state laws.

40 T.A.C. § 700.103 (emphasis added). This rule permits a "client" to review that client's case record, with the exception of the complainant's identity and information excepted from disclosure under the Open Records Act and other state laws. *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions). The department's "CANRIS REPORT-Turnaround Document" contains a space for the client name and for the case name. In completing these forms, the department supplied the names of the children and the father of the family under investigation for the client name. The department supplied the name of the alleged perpetrator for the case name. We are unable to determine whether the department considers the requestor, a parent here, a "client" for purposes of section 700.103. However, even if the department does so consider, the regulation provides an exception to a client's right to review the client's case record for information "exempted from disclosure under the Open Records Act." We now proceed to consider whether the information is exempted from disclosure under the Open Records Act.

Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. J. 781 (June 14, 1996), 1996 WL 325601. Any proper custodian of records can claim section 552.108 for information relating to an investigation or prosecution of criminal conduct. Open Records Decision Nos. 474 (1987), 372 (1983).

In this instance, we believe that the letter from the assistant criminal district attorney in which he states that the requested records relate to a pending criminal prosecution establishes that the requested information is excepted from disclosure under section 552.108. Accordingly, you may withhold the requested information at this time under section 552.108 of the Government Code.²

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 37343

Enclosures: Submitted documents

²We note that there may be a conflict between the provisions of section 261.201(f) and the department’s current regulations, as section 261.201(f) appears to be a parental access provision while the department’s regulations permit the department to withhold information from the parent. We are confident that this apparent conflict will soon be resolved by the department’s enactment of new regulations.